

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED MAR 18 2003

UNITED STATES OF AMERICA,)	
<u>ex rel.</u> GEORGE BRADFORD HUNT and)	
WALTER W. GAUGER, Relators,)	
and)	Hon. Thomas N. O'Neill, Jr.
the States of FLORIDA,)	
CALIFORNIA, ILLINOIS, TENNESSEE,)	
TEXAS, MICHIGAN, LOUISIANA,)	
NEVADA, MASSACHUSETTS, VIRGINIA,)	Case No. 99-CV-2332
and the DISTRICT OF COLUMBIA,)	
)	
)	
Plaintiffs,)	
)	Filed In Camera and
v.)	Under Seal Pursuant to
)	31 U.S.C. § 3730 (b)(2)
MERCK & CO., INC.,)	
MERCK-MEDCO MANAGED)	
CARE, L.L.C., and)	
MEDCO HEALTH SOLUTIONS, INC.)	JURY TRIAL DEMANDED
)	
Defendants.)	

SECOND AMENDED QUI TAM COMPLAINT
FOR FALSE CLAIMS ACT VIOLATIONS

This is a civil fraud action brought by private persons known as qui tam relators, or whistleblowers, on behalf of the United States of America and the sovereign states of Florida, California, Illinois, Tennessee, Texas, Michigan, Louisiana, Nevada, Massachusetts, Virginia, and the District of Columbia pursuant to the qui tam provisions of the Federal False Claims Act, 31 U.S.C. Sections 3729 et seq., and the False Claims Acts of Florida, California, Illinois, Tennessee, Texas, Michigan,

Louisiana, Nevada, Massachusetts, Virginia and the District of Columbia.

INTRODUCTION

1. This is a civil action to recover damages and penalties on behalf of the United States of America and the sovereign states of Florida, California, Illinois, Tennessee, Texas, Michigan, Louisiana, Nevada, Massachusetts, Virginia, and the District of Columbia arising from false claims and statements made and presented by the Defendants and/or their agents, employees and co-conspirators in violation of the Federal Civil False Claims Act, 31 U.S.C. §§ 3729 et seq., as amended ("the FCA") and eleven related State false claims statutes, including the Florida False Claims Act, Fla. Stat. Ann. §§ 68.081 et seq., California's False Claims Act, Ca. Govt. Code §§ 12650 et seq., the Illinois Whistleblower Reward and Protection Act, Ill. Ann. Stat. ch. 740, para. 175/1 et seq., the Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§ 71-5-181 et seq., the Texas Medicaid False Claims Act, Tex. Hum. Res. Code Ann. §§ 36.001 et seq., the Michigan Medicaid False Claim Act, Mich. Stat. Ann. §§ 400.601 et seq., the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. Ann. §§ 46:439 et seq., the Nevada False Claims Act, Nev. Rev. Stat. §357.010 et seq., the Massachusetts False Claims Act, Mass. Ann. Laws Ch. 12, §5(A) - (O) et seq.; the Virginia Fraud Against Taxpayers Act, Va.

Code Ann. §8.01-216.1 et seq., and D.C. Code Ann. §§ 1-1188.13 et seq. The violations involve false and fraudulent claims Defendants have made or caused to be made since on or before November, 1993.

2. The FCA and each of its state-law counterparts provide that any person who knowingly submits or causes to be submitted a false, or fraudulent claim to the government for payment or approval is liable for civil penalties for each such claim submitted or paid, plus up to three times the amount of the damages sustained by the government as well as other relief the court may deem appropriate.

3. Liability attaches under each statute when a defendant submits (or causes another to submit) a claim for payment from government funds that defendant knows is unwarranted and when false records or statements are knowingly made or used (or caused to be made or used) to get a false or fraudulent claim for government funds paid or approved. Except for Texas state claims, liability attaches as well when a defendant knowingly makes, uses, or causes to be made, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money to the government.

4. The FCA and each of its state-law counterparts allow any person having information regarding a false or fraudulent claim for payment from government funds to bring an action for himself (the "Relator" or "qui tam Plaintiff") and for the government and to

share in any recovery. The Complaint initially is filed *ex parte* under seal (without service on the Defendants during the seal period) to enable the Government: a) to conduct its own investigation without the Defendants' knowledge; and b) to determine whether to join or intervene in the action or to allow the Relators to prosecute some or all of the action on their own.

5. Based on those provisions, Relators seek to recover damages and civil penalties arising from presentation of false and fraudulent records, claims, and statements to the governments of the United States of America, Florida, California, The District of Columbia, Illinois, Tennessee, Texas, Michigan, Louisiana, Nevada, Massachusetts, Virginia and their agents, carriers, and intermediaries that Defendants made, or caused to be submitted, in connection with Merck-Medco's practices through affected states' Medicaid programs. Relators seek to recover all available damages, civil penalties, and other relief for both federal Medicare and state Medicaid expenditures affected by Defendants' fraud in each listed state, as well as for Medicaid expenditures affected by Defendants' fraud in every other state to which Defendants' misconduct has extended.

PARTIES

6. The Plaintiffs are the United States of America ("United States") and the sovereign states of Florida, California, Illinois, Tennessee, Texas, Michigan, Louisiana, Nevada, Massachusetts, Virginia, and the District of Columbia.

7. Relator George Bradford Hunt ("Mr. Hunt") resides in Las Vegas, Nevada. Mr. Hunt is a licensed Nevada pharmacist in good standing and a former employee of Merck-Medco at its Las Vegas, Nevada prescription drug mail order facilities. Mr. Hunt was employed at Merck-Medco from September, 1987 through October, 1998.

8. Relator Walter W. Gauger ("Mr. Gauger") resides in Plantation, Florida. Mr. Gauger is a licensed Nevada pharmacist in good standing and former employee of Merck-Medco at its Las Vegas, Nevada prescription drug mail order facilities. Mr. Gauger was employed at Merck-Medco from October, 1990 through May, 1998.

9. Defendant Merck & Co., Inc. ("Merck") is a New Jersey corporation and one of the world's largest manufacturers of prescription drugs with annual revenues exceeding \$47 billion. Merck is a global research-driven pharmaceutical company that discovers, develops, manufactures and markets a broad range of human health products.

10. Merck also provides pharmacy benefit management services on behalf of state and federally funded health plans through its wholly owned subsidiary Merck-Medco Managed Care, L.L.C. ("Merck-Medco Managed Care"). Merck is the parent company of Merck-Medco Managed Care, which is a Delaware limited liability company. Merck acquired its pharmacy benefit management business from Medco Containment Services, Inc. ("Medco"), in November 1993 for \$6 billion, and renamed the company Merck-Medco Managed Care, L.L.C. Merck-Medco Managed Care is now known as Medco Health Solutions, Inc. ("Medco Health").¹ Merck is found in and transacts business in this judicial District.

11. Defendants operate a nationwide chain of prescription drug mail order facilities under the names of numerous corporate entities, including, but not limited to Merck-Medco Managed Care of California, Inc.; Merck-Medco Rx Services of Florida No. 2, L.D.; Merck-Medco Rx Services of Florida, L.C.; Merck-Medco Rx Services of Massachusetts, L.L.C.; Merck-Medco Rx Services of Nevada, Inc.; Merck-Medco Rx Services of New Jersey, L.L.C.; Merck-Medco Rx Services of New York, L.L.C.; Merck-Medco Rx Services of Ohio, Ltd.; Merck-Medco Rx Services of Ohio No. 2, Ltd., Merck-Medco Rx

¹ For purposes of this Complaint, Medco Health Solutions, Inc. and Merck-Medco Managed Care, L.L.C. will be collectively referred to as "Merck-Medco."

Services of Oklahoma, L.L.C.; Merck-Medco Rx Services of Pennsylvania, L.L.C.; Merck-Medco Rx Services of Pennsylvania No. 2, L.L.C.; Merck-Medco Rx Services of Texas, L.L.C.; Merck-Medco Rx Services of Virginia, L.L.C.; Merck-Medco Rx Services of Washington, Inc., such that each of which is under the control of Defendants.

12. Merck-Medco is the country's largest pharmacy benefit manager ("PBM"), providing pharmacy services through its chain of mail order pharmacies, and through a nationwide network of retail pharmacies serving over 55,000,000 Americans in every state and the District of Columbia, including this judicial District.

13. Merck-Medco enters into contracts to provide pharmacy benefit programs for over a thousand clients, including numerous federal and state health benefit plans. Merck-Medco is found in and transacts business in this judicial District.

14. Numerous state and federal health plans have used and continue to contract with Merck-Medco for pharmacy benefit management services, utilizing Merck-Medco's retail networks, as well as extensive use of its nationwide operation of mail order pharmacies. For example, some thirty percent of the Blue Cross and Blue Shield Association's Federal Employee's Health Benefit Program ("FEHBP") prescription payments go to Merck-Medco's mail order service. In addition, over two-thirds of the Government Employee

Hospital Association ("GEHA") prescription payments are paid to Merck-Medco for mail order pharmacy services.

15. At all material times relevant hereto, Merck-Medco has been a subsidiary of and is under the control of Merck.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction pursuant to 31 U.S.C. § 3732(a) (False Claims Act cases), 28 U.S.C. § 1331 (claims arising under the laws of the United States), and 28 U.S.C. § 1345 (claims brought by the United States). The underlying facts substantiating this Court's jurisdiction are set forth in greater detail below.

17. This Court has supplemental jurisdiction over Relators' state law claims pursuant to 28 U.S.C. § 1367 because those claims are so related to the federal claims that they form part of the same case and controversy under Article III of the United States Constitution. This Court also has jurisdiction over the state actions pursuant to 31 U.S.C. Section 3732(b), because the state claims arise from the same transactions and occurrences as the federal action.

18. Venue is proper in this district pursuant to 31 U.S.C. § 3732(a) because Merck-Medco transacts business in Pennsylvania (including maintaining two mail order pharmacies as separate Pennsylvania corporations), markets its mail order services to

government plans in Pennsylvania (such as to the Defense Logistics Agency through the Defense Personnel Support Center in Philadelphia, Pennsylvania and to the Pennsylvania state employee plan), is found in this judicial District, and because acts proscribed by 31 U.S.C. § 3729 occurred in this District.

19. Pursuant to the False Claims Act, this complaint is to be filed in camera and remain under seal for a period of at least sixty (60) days and shall not be served on the Defendants until this Court so orders.

NATURE OF THE CASE AND FACTUAL BACKGROUND

A. Skyrocketing Prescription Drug Costs

20. The cost of prescription drugs for state and federal health plans is skyrocketing. Prescription drug expenditures have far outpaced other health care costs, and is the fastest growing cost of health plans such as those funded by the state and federal governments. As a result of these escalating costs, 26 million Americans lack insurance for prescription drugs. For example, FEHBP medical plan premium increases for 1999 were 10.2%, driven in large part by a 22% rise in costs for prescription drugs, which make up close to 30% of the cost of all FEHBP expenditures.

21. To control their prescription benefit costs, health plans carve out the administration and management of their plan's prescription drug benefit to pharmacy benefit managers such as

Merck-Medco and encourage members to use mail order pharmacy services such as those provided by Merck-Medco.

22. A pharmacy benefit manager (hereinafter referred to as "PBM"), provides prescription claims processing and/or mail order pharmacy services on behalf of third party payers. Many PBMs such as Merck-Medco provide additional services, such as drug formulary management, the development of retail pharmacy networks, the aggressive negotiation of drug rebates with manufacturers and drug utilization review.

23. Defendants market their PBM and mail order pharmacy services as a means for health plans to save money by reducing their skyrocketing prescription drug costs.

24. Despite Defendants' representations that its plans will save money by contracting with Merck-Medco, Defendants' longstanding business practices ultimately raise the cost of the prescription drug benefit to state and federally-funded health care plans, and may endanger the health of plan beneficiaries.

B. Overview of Merck and Merck-Medco

25. The acquisition of a pharmacy benefit manager such as Medco appealed to Merck as a means to increase the marketing and sales of Merck-brand drugs in the increasingly competitive, but highly lucrative, prescription drug industry. Merck-Medco now

accounts for approximately fifty-five percent (55%) of Merck's estimated \$47.7 billion annual revenue in 2001.

26. Merck-Medco is the largest PBM and mail order pharmacy in the country, managing \$26.3 billion in 2001 prescription drug spending, with over 65 million plan enrollees, filling approximately 537,000,000 prescriptions annually. Merck-Medco employs over 16,500 people, including approximately 2,500 licensed pharmacists throughout the United States.

27. For patients utilizing their local independent or chain pharmacy, Merck-Medco provides access for a health plan's patients to a nationwide network of more than 58,000 retail pharmacies. Members of a health plan are provided a prescription drug card from Merck-Medco which a patient presents to a pharmacist to obtain prescription drugs together with payment of the applicable co-pay amount, which may vary by plan.

28. For patients who wish to fill prescriptions through the mail, Merck-Medco provides forms which a patient or doctor may use to request an order for the filling of prescription drugs by one of Merck-Medco's 12 mail order centers and two specialty pharmacies located in: Florida (2); Nevada, New Jersey (2); Ohio (2); Pennsylvania (2); Texas (2); and Washington. At times relevant to the allegations in this Amended Complaint, Merck-Medco also filled

prescriptions from mail order centers in Albany, New York, and Wilmington, Massachusetts.

29. The putative advantage for patients of purchasing drugs by mail usually involves lower or no co-payments paid by the patient, and patients who are on a long-term or maintenance regimen of prescription drugs find mail order more convenient. Health plans encourage their members to use mail order pharmacy services because of the purported substantial cost savings to beneficiaries and plans for many medications when compared with prices charged at a retail pharmacy. Mail order accounts for approximately 20 percent of all prescriptions filled by Merck-Medco.

30. A patient covered under a plan (such as the plans provided by the state and federal governments) who submits a mail order request must include and pay the applicable co-pay amount (if any). The balance due is the responsibility of health plans such as those administered by state and federal governments.

31. Along with its mail order pharmacy dispensing services, Merck-Medco also markets and provides integrally-related pharmacy services to health plans, such as prescription verification, drug utilization review, customer service, and managed care. These services are included in the provider reimbursement fees charged to health plans by Defendants.

32. At all material times hereto, Merck-Medco's mail order pharmacy clients include over 100 local, state and federal employee and retiree groups, including but not limited to the FEHBP, GEHA, the National Association of Letter Carriers ("NALC"), the American Postal Workers Union ("APWU"), the Special Agents Mutual Benefit Association ("SAMBA"), Retired Military Officers, the National Mail-Order Pharmacy (known as the "NMOP," a mail order pharmacy benefit offered to active duty military beneficiaries, CHAMPUS beneficiaries, and TRICARE beneficiaries) as well as numerous other federal and state plans.

33. The mail order pharmacy benefits are provided through contracts between Merck-Medco and the governments, and/or through contracts entered into by entities on behalf of the governments. For example, the Blue Cross and Blue Shield Association (under the supervision of the OPM), has had a contract on behalf of some four (4) million participants in the FEHBP since 1987 with Merck-Medco (and its predecessor Medco) to provide mail order pharmacy services ("FEHBP Contract").

34. A typical mail order pharmacy contract with Merck-Medco includes a number of quality assurance standards, which are used to monitor performance under the contract. For example, the FEHBP Contract includes a guaranteed accuracy rate in filling prescriptions of less than one error in 20,000 prescriptions, or an

error rate of .005 percent. In addition, the FEHBP Contract includes a performance guarantee that Merck-Medco will dispense 99 percent of the prescriptions it receives daily within 5 business days.

35. Merck-Medco represents and boasts to its clients nationwide that licensed pharmacists check each mail order prescription before it is sent out, with as many as three or four quality checks. Further, Merck-Medco represents that through the use of highly sophisticated computers and the use of bar-coding technology, the dispensing process is designed to have multiple pairs of eyes which look at each prescription. This system is supposed to catch internally any errors that may occur.

36. The mail order pharmacy contracts Merck-Medco provides to government programs like FEHBP and GEHA include fees charged for various pharmacy services beyond filling prescriptions, including, but not limited to drug utilization review ("DUR"), customer service, and managed care.

37. At all times material hereto, the state and federal governments have paid and continue to pay hundreds of millions of dollars for Merck-Medco mail order pharmacy services. For example, the FEHBP paid approximately \$1 billion to Merck-Medco during calendar year 1998 alone for mail order pharmacy services.

C. Operation of Automated Mail Order Pharmacies--the Old
Medco Prescription Mail Order Facility

38. Prior to its acquisition by Merck in 1993, Medco had constructed a nationwide chain of automated mail order pharmacies, such as its large facility located in Las Vegas, Nevada. Although intended to fill tens of thousands of prescriptions each week, Medco built a prudent system for mail order prescription services which stressed adherence to good pharmacy practices, such as drug dispensing accuracy. For instance, Medco's largely automated prescription mail order facility in Las Vegas, Nevada (the "Old Facility") included no less than three quality checks to verify accurate drug dispensing: two checks by licensed pharmacists and a final check by pharmacy clerks.

39. Despite Medco's processing of large volumes of prescriptions, checks were in place to ensure accuracy. For instance, the dispensing process at the Old Facility was as follows: a prescription was received by Medco through the mail, where it was first pre-screened by a trained pharmacist. If there were problems with a prescription such as omitted strength, amounts, etc., the pharmacist sent the prescription to an area termed "Doctor Call" whereupon a trained pharmacist placed a call to the prescribing physician to verify or correct necessary information.

40. Prescriptions which did not warrant a call to the physician were sent to coders/typists who entered the verified information into a computer based on the writing of a trained pharmacist on a piece of paper (termed "wings") attached to the prescription. The actual prescription was forwarded to a team of trained and licensed pharmacists who filled each prescription.

41. These licensed pharmacists ensured accurate drug, strength and amount by verifying the hard copy of the prescription with the bottle label. Finally, to ensure properly labeled bottles and packaging corresponded with the correct patient name and address, pharmacy clerks conducted a final check of the prescription in the manual packing area before prescriptions were mailed to patients.

42. After Merck acquired Medco's mail order facilities, significant changes in policies and procedures were instituted which marked a shift from prudent pharmacy practices, such as dispensing accuracy and patient health, to a focus on profit maximization.

D. Assembly Line Pharmacy

43. At the time Merck acquired Medco's mail order operations in Las Vegas, Nevada, Medco's Old Facility was a partially automated facility utilizing a system of Baker Cells which filled prescriptions mechanically. Merck-Medco operates similar

Baker Cells systems at all of its sites across the United States, including its facilities in Pennsylvania.

44. The Merck-Medco Baker Cells process can be described as a complex mechanical system of approximately 1,500 customized fully automated cells of drugs each connected to separate tubes situated in a large warehouse-type structure. When an order for a prescription is entered in the computer integrated system by the entry clerks and reviewed by a pharmacist, the Baker Cells system is supposed to dispense the correct drug, drug strength, and amount automatically into prescription bottles quickly moving through the complex system of tubes.

45. At the time of the acquisition, the Old Facility filled approximately 70,000 prescriptions per week. After the sale, Merck-Medco embarked on a concerted effort to implement its new policies to increase revenue. For example, a new system was established whereby the number of pharmacist "checks," or verifications, made to its automated Baker Cells system were reduced or eliminated altogether. As a result, prescriptions were not given a final check for accuracy.

46. Shortly after Merck-Medco gained operational control of Medco's Las Vegas, Nevada facility, a massive new mail order pharmacy was designed, and plans were made to construct a state-of-the-art prescription mail order operation that would vastly surpass

the Old Facility in the number of mail order prescriptions filled. This facility was termed the New Dispensing Pharmacy ("NDP"). This mail order pharmacy is one of the largest facilities of its kind in the United States.

E. Merck-Medco's "Pharmacy of the Future" in Las Vegas, Nevada

47. Beginning in or about March, 1996 Merck-Medco began limited operation of this new NDP mail order facility. The NDP became operational in or about October 1996, and fully operational by April, 1997, at which time Merck-Medco announced the closing of the Old Facility.

48. Merck-Medco planned to operate the NDP on a national scale, with mail order prescriptions being filled at the NDP facility for patients across the United States. Defendants set a goal of filling 500,000 prescriptions weekly at this facility. In order to accomplish this aggressive goal, Merck-Medco designed and constructed a massive, completely automated mechanism employing sophisticated software and computer integrated Baker Cells systems to count and dispense tablets and capsules into pill bottles.

49. At all material times hereto, consistent with Merck's shift from good pharmacy practices to policies emphasizing revenue maximization, Merck-Medco implemented policies which limited

licensed pharmacists' role at the NDP, in order to keep costs per prescription down, and Merck's profits up.

50. In its zeal to eliminate pharmacists' role in filling prescriptions, Merck-Medco's operation differed dramatically from Medco's practices. Licensed pharmacists were no longer reading and verifying mailed prescriptions prior to entry into a computer; prescriptions were now entered by data entry clerks with no formal pharmacy training. Pharmacists no longer had direct control for supervising the quality of work performed by clerks; clerks were being supervised by non-pharmacist supervisors whose primary goal was productivity.

51. Pharmacists were no longer filling prescriptions; prescriptions were now filled with unreliable automated machinery. Pharmacists were no longer checking each prescription to make sure bottles had the correct prescription and pill count; the checking area was phased out as being too expensive. Instead, pharmacists in the dispensing department called "Team Order Review" were limited to: a) reviewing on a computer screen entries made by data entry personnel of a physician's prescription; and b) engaging the corresponding button in the computer which queued the Baker Cells system of counting and dispensing drugs.

F. Merck-Medco's Schemes for Optimizing Mail Order Service Profits

52. After the acquisition of Medco in 1993, Merck set out to boost its revenues and profits at all of Medco's prescription drug mail order facilities located across the country, including but not limited to Las Vegas, Nevada; Tampa, Florida; Fort Worth, Texas; Columbus, Ohio; and Mechanicsburg, Pennsylvania.

53. To accomplish this goal of maximizing revenue, Merck-Medco changed many of Medco's old procedures and implemented policies which mandated lowering the per-prescription cost of processing orders for prescription drugs which are mailed to patients across the country. Merck-Medco meticulously tracked the per-prescription cost of processing mail order services as one means of keeping costs down, and profits up.

54. Relators believe and therefore allege that Defendants' policies to increase revenue were established, directed and coordinated on a nationwide scale, and intended to impact all of Defendants' customers such as FEHBP, and other prescription mail order operations across the country.

55. For example, Defendants negotiated and entered into contracts which spelled out the nature of the services which were to be rendered (including mail order performance guarantees), established where particular customers' mail order business was to

be performed (e.g., GEHA has been assigned to the Las Vegas, Nevada facility), and mandated weekly prescription quotas for each mail order facility.

56. The effect of Defendants' revenue maximization policies is and has been to curtail licensed pharmacists' involvement and interaction with patients, physicians and individual prescriptions at its mail order facilities. Merck-Medco has discouraged detailed attention to accurate prescription drug dispensing and patient care by pharmacists because any additional effort, beyond that viewed by Defendants as the minimum needed to ship prescriptions to patients, adds to Defendants' cost per mail order prescription filled.

57. Defendants' goals have been to minimize the cost of filling a mail order prescription, in order to increase profits. As a result, Merck-Medco's policies cause the payers of prescription drugs and health care, including the state and federal governments, to be fraudulently billed for services not rendered or rendered well below quality standards, and/or billed for prescriptions not supplied.

58. As an example of the result of Defendants' profits-before-patients policy, mail order prescriptions were filled inaccurately at Merck-Medco's mail order facilities, including but not limited to the Las Vegas, Nevada facility, causing a regular "shorting" of the amount of tablets or capsules dispensed to

patients, with no corrections on labels to inform the patient of the shorted prescription, and with no corresponding reduction or adjustment in billing.

59. As another example of the result of Defendants' profits-before-patients policy, Defendants' mail order facilities, including but not limited to its Columbus, Ohio facility, shipped prescriptions to patients without ensuring that the prescriptions were full, accurate and complete.

60. The "shorting" of prescriptions and the failure to quality check prescriptions filled for patients caused Defendants to misrepresent its contractual performance in filling prescription orders and in meeting accuracy rate guarantees.

FALSIFICATION OF PRESCRIPTION ORDERS

61. Merck-Medco represents that, in addition to accurate prescription dispensing, their mail order facilities have the ability to fill prescription orders in a timely manner and in accordance with all contractual performance guarantees.

62. Relators believe and therefore allege that under these contractual performance guarantees, Defendants: (1) must pay performance penalties if they fail to meet their performance guarantees; and (2) receive awards if they meet or exceed their performance guarantees.

63. Consistent with Defendants' aggressive profits-before-patients policy, Defendants pressured their employees, at a number of Defendants' locations in Florida and throughout the United States, to increase productivity and meet contractual performance guarantees.

64. As a result of this pressure, Defendants caused their employees to permanently delete, cancel or otherwise falsify prescription orders in order to meet contractual performance guarantees. A number of orders permanently deleted belonged to FEHBP patients.

65. In particular, in order to achieve Merck-Medco's productivity rates and to meet contractual performance guarantees, Defendants' employees, at a number of Defendants' locations in Florida and throughout the United States, were directed by supervisors to permanently delete prescriptions and open invoice reports so that it would appear that the mail order facilities had less backorders and Merck-Medco would avoid paying contractual performance penalties.

66. As a direct result of Defendants' productivity pressures, Defendants' employees falsified records and patients did not receive prescriptions that had been ordered or did not receive their prescriptions on a timely basis.

67. Relators believe and therefore allege that these practices are systemic throughout Merck-Medco mail order facilities and that these practices were known, condoned and in some cases directed by Defendants' senior management officials due to Defendants' pressures to increase individual pharmacy productivity.

68. Relators believe and therefore allege that the deletion or cancellation of prescription orders, open invoice reports and the falsification of records caused Defendants to misrepresent actual contractual performance and avoid paying performance penalties.

69. Relators believe and therefore allege that the falsification of contractual performance reports has resulted in Defendants avoiding paying performance penalties and/or receiving performance awards under their contracts with health plans including those provided to state and federal governments.

DRUG SWITCHING SCHEMES IN "MANAGED CARE DEPARTMENTS"

70. Merck-Medco represents that its mail order facilities have Managed Care Departments whose stated purpose is to contact physicians to monitor clinical outcomes and maintain compliance with drug formularies.

71. Defendants market a therapeutic drug switching program which is intended to ensure patients are receiving the most

effective drug, and the drug selection is consistent with the health plan's drug formulary.

72. The fees charged by Merck-Medco to provide PBM and/or mail order services to plans, such as those offered to state and federal government programs, include a Managed Care fee for its so-called therapeutic switch program.

73. A formulary is supposed to be a list of FDA-approved prescription drug medications, created to assist in maintaining the quality of patient care and containing costs for the patient's drug benefit plan. Prescribers are requested to refer to the formulary when selecting prescription drug therapy for plan members. Merck-Medco provides copies of its formulary to doctors, patients and pharmacists to aid prescribers' adherence to the formulary.

74. Formularies are created and monitored by Pharmacy and Therapeutics committees ("P&T" committees), whose members determine what classes of drugs, and which drugs within each class, will be covered by the health plan, and thus become part of a plan's formulary. Many health plans do not have P&T committees, or have P&T committees which defer to Merck-Medco's proposed formulary. As a result, Merck-Medco's pre-determined formulary is adopted by many health plans as its formulary. This formulary is called the "Preferred Prescriptions Drug Formulary."

75. Defendants represent to health plans that its "Preferred Prescriptions Drug Formulary" is reviewed by an independent P&T committee, and will achieve quality care and cost containment objectives for health plans. However, this formulary contains many expensive Merck-brand drugs, including Zocor, Mevacor, Prinivil, Vasotec, Cozaar, Hyzaar, Prinzide, Vaseretic, Pepcid, Fosamax, Timoptic, Trusopt, Cosotp, Chibroxin, Singulair, Proscar, Noroxin, Sustiva, Crixivan, Maxalt, Clinoril, Dolobid, and Vioxx. This list constitutes the majority of drugs manufactured by Merck, which are susceptible to mail order pharmacy dispensing (i.e. vaccines are not included).

76. In reality and practice, the role of Merck-Medco's Managed Care Department is to switch patients from a currently prescribed drug to a "target" drug. This target drug is either a Merck-manufactured formulary drug and/or a drug manufactured by a competitor company with whom Merck has entered into a lucrative and undisclosed rebate contract.

77. Defendants' drug switching policies generate substantial income. This income is derived from Merck-Medco's lucrative contracts with drug manufacturers all over the country which provide it with a substantial rebate revenue stream when these drugs switches are accomplished. These contracts provide generous financial incentives when Merck-Medco increases a particular drug's

market share. The greater success at drug switching, the greater the rebate received from drug manufacturers as market shares increase.

78. The primary reason Merck-Medco switches drugs is to enhance revenue for Defendants without regard to health plan costs, or any potential adverse or life-threatening clinical outcomes by patients associated with the switch.

79. To increase drug switching success rates, Merck-Medco pressures employees and pharmacists working in the Managed care Department to switch drugs, and requires employees and pharmacists to meet a quota of calls to physicians and others each hour. Merck-Medco monitors closely the rate at which attempts to switch drugs are successful. If employees fail to meet the quota, they are subject to disciplinary action and employment review.

80. Merck-Medco employees are provided with a Merck-Medco "canned" script that specifies how employees should pitch proposed drug switches.

81. At times, calls to physician offices are preceded by a fax sent to the physician's office from a Merck-Medco corporate office requesting that the physician switch to the Merck-Medco targeted drug.

82. Patient and physician complaints about switching prescriptions by the Managed Care Department are common.

These complaints have been communicated in writing to Defendants. Merck-Medco routinely ignores these complaints including the health risks associated with inappropriate drug switches.

83. Merck-Medco does not follow-up with patients who have been switched to a different drug, and fails to monitor the outcome of these drug switches.

84. Relators believe and therefore allege that Merck-Medco's aggressive policy of drug-switching has contributed, and continues to contribute, to dramatically higher overall medical costs for all payers including state and federal health care plans, and can place the public at significant medical risk.

85. In light of the foregoing, Merck-Medco mail order customers, including state and federal governments, are being charged fees for Managed Care services not being rendered as represented, and are being charged for drug switching services which increase the cost to payers, while benefitting Merck-Medco. As such, Defendants are submitting false claims.

86. Drug switching based on undisclosed financial reasons may endanger the health and/or life of the patient whose drug was switched at the initiation of Defendants.

87. Merck-Medco earns hundreds of millions of dollars per year from drug manufacturers by successfully switching patients to targeted drugs.

88. Merck earns hundreds of millions of dollars per year from Merck-Medco's aggressive drug switching to Merck-brand drugs.

BILLING FOR PHARMACY SERVICES NOT PROVIDED

A. Drug Utilization Review

89. Defendants represent to customers that, in addition to accurate prescription dispensing, they will provide the same pharmacy services which trained pharmacists perform at non-mail order pharmacies. These services involve patient quality of care issues, such as prevention of adverse drug interactions, verification of drug strength, recommendation of alternative medically appropriate drugs and monitoring patient outcomes.

90. Consistent with Defendants' policies of decreasing costs by further minimizing pharmacists' roles, Defendants employ cheaper, non-pharmacist employees to perform many of the tasks of trained, licensed pharmacists. The resulting diminished quality of mail order pharmacy services falls well below the professional standards Merck-Medco promises its customers, including state and federal health plans.

91. Relators believe and therefore allege that Defendants have made a number of performance guarantees concerning the mail order pharmacy services they render under contracts with plans such as those provided by the state and federal governments. Under these performance guarantees, Defendants make promises

concerning the quality of the mail order pharmacy services rendered and: a) must pay a penalty if they fail to meet a performance measure; or b) receive awards if they meet or exceed a performance measure.

92. One of the services which Merck-Medco markets nationwide and provides to mail order pharmacy customers involves pharmacists monitoring patient outcomes and ensuring accurate prescription delivery. One such department in Merck-Medco's mail order facilities is termed Drug Utilization Review ("DUR"). This department is responsible for contacting physicians in order to review a patient's personal drug history to prevent drug-to-drug interactions, duplicate therapy, improper dosing, drug-allergy interactions, drug-age complications, and fraud and abuse.

93. As an example of minimizing pharmacists' roles, at Medco's Old Facility, DUR calls were made entirely by pharmacists, who called physicians' offices to discuss potential drug-to-drug interactions, duplicate therapy, improper dosing, drug-allergy interactions, and drug-age combination. Using pharmacists trained in identifying these issues acted as an effective check on these utilization problems.

94. At the Las Vegas NDP facility, DUR has been reorganized into "pods" with four non-pharmacist employees assigned to work with a single pharmacist. These employees call physicians to

discuss DUR issues, and then connect the physician with the assigned pharmacist to confirm the substance of the DUR call. These employees seldom have college degrees, and have no prior training in pharmacy services other than limited on-the-job training.

95. DUR employees are not supervised by the pharmacists with whom they work. Instead, they report directly to non-pharmacist supervisors who are in charge of maintaining DUR call quotas and productivity.

96. Each member of the pod is provided a quota of hourly calls which each employee must make. The employees are then required to record information about these calls. The quotas each DUR employee must make are part of Merck-Medco's overall efforts to maintain and increase productivity goals.

97. Pods that are slow or who fall behind their quotas are reprimanded and/or pressured to meet their call quotas. DUR employees are reprimanded and/or fired if they fail to maintain their quotas.

98. As a result of the pressures to meet quotas, DUR employees regularly: a) fabricate physician call records so as to maintain hourly call quota rates; b) complete physician calls without ever having pharmacists verify the information with the physician's office; c) change prescriptions without a pharmacist's

intervention; and/or d) falsify records to indicate DUR calls were made to physicians when in fact these calls are not made. Relators believe and therefore allege that these practices are systemic throughout similar DUR departments in Merck-Medco's mail order facilities, including the Merck-Medco mail order facilities located in Pennsylvania.

99. Relators believe and therefore allege that Drug Utilization Review Department call records are inaccurate, and are forged daily, as volume and Merck-Medco's overriding policy to "get the product out the door" places pressure on DUR employees to maintain unreachable volumes of Drug Utilization Review contacts.

100. Merck-Medco's efforts to limit DUR services in its mail order pharmacy operations have resulted, in many instances, in the virtual elimination of the vital role pharmacists play in making sure that drug interactions and prescription changes are being monitored. As a result, patients receiving these prescriptions are placed directly at risk; including patients who participate in government prescription benefit programs.

101. Relators believe and therefore allege that a portion of the provider reimbursement fees Merck-Medco typically charges clients such as state and federal agencies is for DUR-related services. As such, to the extent these services are not being

provided or not provided as promised, Merck-Medco submits false claims to the government.

102. Relators believe and therefore allege that Defendants have misrepresented the DUR performance in order to meet performance guarantees, and have falsified reports concerning the DUR performance measures.

103. Relators believe and therefore allege that the falsification of DUR performance reports has resulted in Defendants avoiding paying performance penalties and/or receiving performance awards under their contracts with health plans including those provided to state and federal governments. As such, Defendants have submitted false and fraudulent reports to the government.

B. The Doctor Call Department

104. Merck-Medco represents to its customers that it operates at the highest level of care and professional standards, and that there is no safer dispensing environment than exists at Merck-Medco.

105. Upon information and belief, each of Merck-Medco's mail order facilities has a Doctor Call Department whose task it is to contact physicians to confirm drug strength, complete inaccurate or questionable patient information, and verify prescription changes.

106. Until 1995, all Merck-Medco mail order Doctor Calls were made by pharmacists who contacted physicians to verify prescription

strength, make corrections to inaccurate prescriptions, and check on prescription changes.

107. Beginning in 1995, Defendants reorganized the Doctor Call Department in its mail order facilities, including but not limited to the NDP, drastically reducing the involvement of pharmacists.

108. The Doctor Call Departments are now comprised of "pods" containing four non-pharmacist employees and one pharmacist. Employees in the pods have individual quotas of making 20 to 25 calls to physicians per hour and then recording the results of these calls. The pharmacist, meanwhile, is only added to the employee's call to the physician at the end to verify information on the prescription. This means that pharmacists are frequently handling (and continue to handle) an unmanageable number of calls, potentially up to 100 calls per hour.

109. The unmanageable number of calls result in the lack of use of readily available on-line patient profiles, further compromising patient safety.

110. Doctor Call employees are not supervised by the pharmacists with whom they work. Instead, they report directly to non-pharmacist supervisors who are in charge of maintaining Doctor Call quotas and productivity.

111. As a result of the chaotic environment created by Defendants' pressures to meet aggressive quotas and maintain

financial productivity, Doctor Call employees regularly:
a) fabricate Doctor Call records so as to maintain hourly call quota rates; b) complete physician calls without ever having supervising pharmacists verify the information with the physician's office; c) change prescriptions without a pharmacist's intervention; and/or d) falsify records to indicate Doctor Calls were made to physicians when in fact these calls are not made. Relators believe and therefore allege that these practices are systemic throughout Merck-Medco's mail order facilities.

112. Doctor Call employees who complain, or who attempt to slow down the process to ensure that calls are being done accurately, are subject to disciplinary action, including termination.

113. Merck-Medco's efforts to limit the Doctor Call services in its mail order pharmacy operations have resulted, in many instances, in the virtual elimination of the vital role Doctor Call pharmacists play in making sure that drug interactions and prescription changes are being monitored and drugs correctly dispensed. This lack of pharmacists' involvement directly places at risk those patients who receive these prescriptions, including patients who participate in government prescription benefit programs.

114. As a result of the foregoing, Merck-Medco's customers are being charged for services not rendered or that are being rendered well below even marginally adequate professional standards. As such, Defendants are submitting false claims to the government.

115. Relators believe and therefore allege that Defendants have misrepresented the Doctor Call performance in order to meet performance guarantees, and have falsified reports concerning the Doctor Call performance measures.

116. Relators believe and therefore allege that the falsification of Doctor Call performance reports has resulted in Defendants avoiding paying performance penalties and/or receiving performance awards under their contracts with health plans including those provided to state and federal governments. As such, Defendants have presented false and fraudulent reports to the government.

C. Customer Service

117. Defendants represent to their customers, including the government, that their mail order services include a customer service department staffed by licensed pharmacists twenty-four hours a day, seven days a week to answer questions from beneficiaries.

118. The cost of staffing the Customer Service Department is included as a portion of the fees Merck-Medco charges its

customers, including state and federal mail order programs. The contracts provide financial incentives for Merck-Medco to exceed certain performance measures as well as penalties for not meeting these measures. For example, the FEHBP contract specifies that Customer Service calls will be answered within certain time frames, and that no more than 2 percent of customer calls a week will receive a busy signal (known as "call blockage").

119. Relators believe and therefore allege that all of Merck-Medco's mail order facilities all have a Customer Service area that is responsible for handling complaints received from its mail order customers around the country.

120. The pervasive problems experienced in the Las Vegas NDP with drug shorting became particularly exacerbated due to the need to meet weekly quotas for filling prescriptions. In order to maintain production quotas to get the product out the door, Defendants relied on Customer Service to take care of the shorting problems. Despite the fact that Defendants were well aware of systemic problems with drug-shorting, Customer Service employees were regularly advised to lie to customers who had complained about having received shorted medications. The Defendants' employees were told to tell customers that their shorted prescriptions were done accidentally or by mistake. To the contrary, the Defendants

knew that many prescriptions being mailed out on a daily basis had been shorted.

121. Each day the Customer Service department employees receive lists of customer complaints they are to work on, and attempt to resolve. Relators believe and therefore allege that the lists of customer complaints became so long that it was simply impossible to respond to all of the callers, and Merck-Medco did not respond to many of these complaints.

122. When Customer Service employees complained about the high volume and severity of these problems, Merck-Medco supervisors instructed them that they were forbidden to talk about the Company's operational difficulties and that Merck-Medco would be regularly taping telephone calls coming in and out of the Customer Service Department to make sure no employee disclosed these problems.

123. The Customer Service areas regularly received "horror stories" from customers who had received incorrect mail order prescriptions, including shorted prescriptions, the wrong drugs, incorrect dosage, crushed pills, and the incorrect number of days supply. Despite this, the Company chose to engage in a deliberate scheme to ignore and/or deceive patients who contacted them about errors or mistakes.

124. Relators believe and therefore allege that these deliberate deceptions or omissions have caused (and continue to cause) patient medical harm and considerable financial harm to those paying for these prescriptions, including programs sponsored by the state and federal governments.

125. As a result of the foregoing, Merck-Medco's customers have been and are being charged for services not rendered or that are being rendered well below even marginally adequate professional standards. As such, Defendants are submitting false claims to the governments.

126. Relators believe and therefore allege that Defendants' deliberately misrepresent the performance of its Customer Service department in order to meet performance guarantees for resolving customer complaints. To the extent that Defendants' Customer Service performance records omit the fact that many customer complaints have been ignored and/or that customers have been lied to concerning shorting and/or other errors in their prescriptions, Defendants have submitted false and fraudulent reports concerning the Customer Service performance measures.

127. Relators believe and therefore allege that the submission of false Customer Service performance reports has resulted in Defendants avoiding paying performance penalties and/or receiving performance awards under their contracts with health plans

including those provided to state and federal governments. As such, Defendants have submitted false reports to the government.

DEFENDANTS' DRUG SHORTING PRACTICES

128. Merck-Medco bills Federal and State health insurance plans nationwide for prescription drugs shipped to patients without accurately ensuring that the correct number, strength, dosage and type of drugs are in the correct bottle. In effect, Merck-Medco has replaced prudent pharmacy practices and procedures with shoddy assembly line techniques.

129. A glaring example of Merck-Medco's disregard of dispensing accuracy is its operation of the Las Vegas, Nevada NDP. The NDP uses an elaborate but unreliable Baker Cells system which caused, and upon information and belief continues to cause, prescription tablet and capsule counts to be inaccurate.

130. Merck's use of this unreliable system has caused a regular "shorting" of prescriptions, whereby the intended pill or capsule count is less than what the physician orders, less than what the patient should receive, and less than what government-funded health plans pay for.

131. Problems with the dispensing process at the NDP, including drug shorting and crushed pills, occurred daily, and, depending on the relative performance of the unreliable Baker Cells system, affected the accuracy of many of the prescriptions filled.

132. Merck-Medco corporate management was and is aware of the problems associated with the Baker Cells system for dispensing drugs, and knows that this complex computer-integrated mechanical system was delicate, prone to malfunction, and frequently unreliable. Defendants held frequent conferences and meetings to discuss the shorting problems.

133. Defendants concluded that shipping prescriptions to patients in an attempt to avoid performance penalties for late shipments was more important than fulfilling a licensed pharmacists' primary purpose of filling prescriptions accurately.

134. The extreme shorting problem in Las Vegas began on or about the time Defendants reorganized Medco's Old Facility in March 1996, and became more pronounced when the NDP came on-line in approximately October 1996.

135. The automated Baker Cells system continued to malfunction. As a result, Merck-Medco initially attempted to correct for the inaccurate pill counts by establishing a "checking area" where pharmacists were charged with checking every prescription in every package.

136. Defendants were concerned that this checking for inaccurate and shorted prescriptions by pharmacists was very expensive, and driving the cost per-prescription up. As a result,

Defendants soon discontinued checking for prescription drug count accuracy altogether.

137. Ultimately, the Defendants' solution to the problem of shorting was to ignore NDP's dispensing problems. As part of its plan to mask the drug shorting issue at the NDP, Merck-Medco discontinued its previous policy on open publication of error rates so that pharmacists' understanding of the company's error rates was eliminated. (Prior to this time, Merck-Medco each day posted the prior day's error rate at the Old Facility).

138. Defendants had replaced Medco's old focus on reducing prescription error rates, with an obsession to reduce costs. By meticulously tracking every cost component in each mail order pharmacy throughout the United States, Merck-Medco is able to calculate its precise costs per-prescription.

139. Merck-Medco required that all employees at its mail order facilities reduce overall costs per prescription. As a way to underscore this requirement, the defendants made daily pronouncements over the loudspeakers at the NDP announcing the previous day's costs per-prescription filled, in an effort to "encourage" pharmacists to increase personal productivity.

140. Merck-Medco imposed quotas on pharmacists and other employees at all of its mail order pharmacies as a means to reduce its per prescription cost, and to increase profits. For example,

quotas were instituted on the number of prescriptions to be dispensed per hour.

141. Pharmacists who failed to meet these quotas were subject to potential disciplinary action. As another example, pharmacists were discouraged from routing prescriptions away from the Baker Cells process to conduct utilization review or telephone doctors on possible problem prescriptions.

142. At the same time that the previous day's cost per prescription was announced, pronouncements were made about the Defendants' daily stock price. Because Merck-Medco offered generous stock options to its employees, these daily stock price announcements carried a not so subliminal message: pharmacists must accept errors and cost-cutting, as profits are more important than accuracy and the quality of patient care.

143. Pharmacists who consistently caused slow-downs to avoid shorting problems or failed to meet production goals were subject to disciplinary action, including termination of employment.

144. The shorting was not reflected on the prescription bottles to inform patients, nor were treating physicians notified that their patients were receiving inaccurate tablet counts.

145. The Defendants were aware that dispensing problems existed at the Las Vegas, Nevada NDP facility, as pharmacists complained to supervisors, managers, and Defendants' Ombudsmen.

146. Merck-Medco corporate management held a meeting with pharmacists in December of 1996 in the NDP. During this meeting, Defendants admitted that the NDP was experiencing drug shorting problems, but down-played it. Management also advised pharmacists that Merck-Medco's policy is to allow shorted prescriptions to be shipped to patients.

147. Following the meeting at the NDP, in a memorandum from Merck-Medco to NDP pharmacists dated December 26, 1996, the company memorialized the policy directive announced at the meeting. According to this memorandum, "short counts" of 3 or less were deemed "acceptable."

148. Merck-Medco thereafter discouraged pharmacists and other employees' discussion of the drug shorting topic. Pharmacists who complained were advised that they had the option to quit.

149. Patients from all over the country frequently called Merck-Medco Customer Service representatives to complain about shorted prescriptions.

150. Relators believe and therefore allege that shorting continued after this time to this day to prescriptions filled at the NDP facility.

151. Relators believe and therefore allege that shorting occurs in Merck-Medco's mail order facilities located around the

country, including but not limited to Nevada, Ohio, Texas, Pennsylvania and Florida.

152. Relators believe and therefore allege that Defendants did not alter, adjust or correct its billings to reflect shorted prescriptions and other dispensing errors. As a result, millions of dollars have been and are being paid by the states and the federal government to Defendants for prescription drugs which were not and are still not being dispensed to patients.

153. Relators believe and therefore allege that Defendants have misrepresented the existence of the shorting problems in order to meet performance guarantees for timing of dispensing prescriptions. To the extent that Defendants' timeliness records misrepresent the fact that many of the prescriptions are being filled incorrectly, Defendants have falsified reports concerning the timeliness performance measures.

154. Relators believe and therefore allege that Defendants have failed to disclose shorting in performance reports relating to error rates despite the fact that they knew of the shorting problems.

155. Relators believe and therefore allege that the falsification of performance reports has resulted in Defendants avoiding paying performance penalties and/or receiving performance awards under their contracts with health plans including those

provided to state and federal governments. As such, to the extent these reports misrepresent performance under the contracts, Defendants have submitted false and fraudulent reports to the government.

THE ILLEGAL REUSE OF RETURNED DRUGS

156. Every one of Defendant's mail order facilities dispenses millions of units of prescription drugs each day. These prescription drugs are shipped to beneficiaries all over the country by way of regular mail, Federal Express, United States Postal Service, Priority Mail and by other means. A significant percentage of these drugs are returned on a regular basis to the defendants for a variety of reasons.

157. Many of these prescriptions have limited shelf lives, have dosage unit and packaging requirements, have special handling needs or are subject to significant product degradation as a result of exposure to heat, cold, light, moisture and/or lack of refrigeration.

158. Restocking and reuse for resale of drugs that have left the custody and control of a pharmacy or pharmacist is illegal and prohibited under federal and state law.

159. Drugs which are returned to Defendant's mail order facilities should be routinely destroyed unless the specific state

or district to which it was dispensed allows for specific conditions under which the drug can be reused.

160. Accurate records of returned drug products must be maintained including the name and labeled potency of the drug, the reason for the return and the ultimate disposition and means of destruction of the returned drug products.

161. Notwithstanding Federal and State laws prohibiting re-use of returned drugs, Merck-Medco routinely restocked and resold drugs that were returned to its facilities.

162. Pharmacists at Merck-Medco mail order facilities raised their concerns over the use of returned stock to Merck-Medco management. Notwithstanding their concerns over patient safety and the violation of state and federal pharmaceutical regulations, the policy remained in effect.

163. Upon information and belief, restocking occurs in all Merck-Medco mail order facilities around the country and may adversely affect mail order patients from all over the country.

164. Defendants' policy of restocking returned drugs is in reckless disregard of the health and safety of state and federal health plan patients, and renders the over-all quality of care afforded to state and federal health plans well below the standard of care expected by the state and federal governments.

165. Restocking and reuse of returned drugs is prohibited by at least the following jurisdictions which are parties to this false claims Complaint: Michigan (Mich. Comp. Laws Ann. §333.17766, Texas (Tex. Health & Safety Code Ann. §431.021), District of Columbia (D.C. Code Ann. §2-2013, Florida (Fla. Stat. Ann. §465.016), Tennessee (Tenn. Com. R. Regs. §§ 1140-3 and 1140-4), Nevada (Nev. Rev. Stat. §639.267), and the United States (21 C.F.R. §211.204).

COUNT I

Submission of False Claims to The United States

166. Relators reallege and incorporate by reference the allegations made in Paragraphs 1-165 of this Second Amended Complaint as if fully set forth herein.

167. By the foregoing acts and omissions, Defendants knowingly defrauded the United States Government by: a) submitting claims for payment to which they were not entitled by virtue of their inaccurate prescription drug counts; b) submitting claims for payment for which they were not entitled by virtue of their failing to perform (or performing well below even marginally acceptable professional standards) mail order pharmacy services, including DUR, Doctor Call, Customer Service, Managed Care and/or the illegal reuse of returned drugs; and c) submitting false reports for services rendered under their contractual performance standards for

their mail order services. Such acts and omissions constituted false or fraudulent claims for payment or approval in violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)-(2).

168. As a consequence of Defendants' conduct, the United States has suffered actual damages in an amount to be proven at trial.

COUNT II

Conspiracy To Submit False Claims to the United States

169. Relators reallege and incorporate by reference the allegations made in Paragraphs 1-168 of this Second Amended Complaint as if fully set forth herein.

170. Defendants conspired with its subsidiaries and parent company to defraud the United States government and the state governments.

171. By the foregoing acts and omissions, Defendants conspired to defraud the United States by getting false or fraudulent claims allowed or paid in violation of the False Claims Act, 31 U.S.C. § 3729(a)(3).

172. As a consequence of Defendants' conduct, the United States and the enumerated states have suffered actual damages in an amount to be proven at trial.

COUNT III

Violation of § 68.082 (2)(a) of the Florida False Claims Act

173. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 172 of this Second Amended Complaint.

174. This is a claim for treble damages and civil monetary penalties under the Florida False Claims Act, Fla. Stat. Ann. §§ 68.081 et seq.

175. Through the acts described above and otherwise, Defendants and their agents and employees knowingly have presented and/or caused to be presented for payment and approval to the Florida Medicaid Program, false and fraudulent claims in order to obtain Medicaid reimbursement, for mail order pharmacy services that were not eligible for any such reimbursement.

176. Florida and its Medicaid carriers, intermediaries and agents --unaware of the falsity of the claims that such Defendants and their agents and employees presented and/or caused to be presented --have paid and approved for mail order pharmacy services that would not have been paid or approved in any part if the truth were known.

177. Defendants illegally restocked drugs returned by Florida beneficiaries to Merck-Medco's mail order facilities and/or

Florida's beneficiaries are receiving these illegally returned drugs.

178. By reason of the such Defendants' wrongful conduct Florida and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT IV

Violation of § 68.082 (2)(b) of the Florida False Claims Act

179. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 178 of this Second Amended Complaint.

180. This is a claim for treble damages and civil monetary penalties under the Florida False Claims Act, Fla. Stat. Ann. §§ 68.081 et seq.

181. Through the acts described above and otherwise, Defendants and their agents and employees knowingly have made, used, and/or caused to be made or used false records and statements in order to get such false and fraudulent Medicaid claims paid and approved.

182. Florida and its Medicaid carriers, intermediaries and agents -- unaware of the falsity of the records and statements that such Defendants and their agents and employees have made, submitted, and/or caused to be made or submitted -- have paid and

approved claims for mail order pharmacy services that would not have been paid or approved in any part if the truth were known.

183. Defendants illegally restocked drugs returned by Florida beneficiaries to Merck-Medco's mail order facilities and/or Florida's beneficiaries are receiving these illegally returned drugs.

184. By reason of the such Defendants' wrongful conduct Florida and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT V

Violation of § 68.082 (2)(g) of the Florida False Claims Act

185. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 184 of this Second Amended Complaint.

186. This is a claim for treble damages and civil monetary penalties under the Florida False Claims Act, Fla. Stat. Ann. §§ 68.081 et seq.

187. Through the acts described above, Defendants and their agents and employees knowingly made, used, and caused to be made or used false records and statements to conceal, avoid, and/or decrease such Defendants' obligation to the Florida's Medicaid program.

188. Defendants illegally restocked drugs returned by Florida beneficiaries to Merck-Medco's mail order facilities and/or Florida's beneficiaries are receiving these illegally returned drugs.

189. By reason of the such Defendants' wrongful conduct Florida and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT VI

Violations of § 12651 (a)(1) of California's False Claims Act

190. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 189 of this Second Amended Complaint.

191. This is a claim for treble damages and civil monetary penalties under California's False Claims Act, Cal. Govt. Code §§ 12650 et seq.

192. Through the acts described above, Defendants and their agents and employees knowingly have presented and/or caused to be presented for payment and approval to the California Medicaid program, false and fraudulent claims in order to obtain Medicaid reimbursement, for mail order pharmacy services that were not eligible for any such reimbursement.

193. California and its Medicaid carriers, intermediaries and agents -- unaware of the falsity of the claims that such Defendants and their agents and employees presented and/or caused to be presented -- have paid and approved claims for mail order pharmacy services that would not be paid or approved in any part if the truth were known.

194. Defendants illegally restocked drugs returned by California beneficiaries to Merck-Medco's mail order facilities and/or California's beneficiaries are receiving these illegally returned drugs.

195. By reason of such Defendants' wrongful conduct California and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT VII

Violations of § 12651 (a) (2) of California's False Claims Act

196. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 195 of this Second Amended Complaint.

197. This is a claim for treble damages and civil monetary penalties under California's False claims Act, Cal. Govt. Code §§ 12650 et seq.

198. Through the acts described above and otherwise, Defendants and their agents and employees knowingly have made, used, and/or caused to be made or used false records and statements in order to get such false and fraudulent Medicaid claims paid and approved.

199. California and its Medicaid carrier, intermediaries and agents -- unaware of the falsity of the records and statements that such Defendants and their agents and employees have made, submitted, and/or caused to be made or submitted -- have paid and approved claims for mail order pharmacy services that would not have been paid or approved in any part if the truth were known.

200. Defendants illegally restocked drugs returned by California beneficiaries to Merck-Medco's mail order facilities and/or California's beneficiaries are receiving these illegally returned drugs.

201. By reason of the such Defendants' wrongful conduct California and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT VIII

Violation of § 12651(a)(7) of California's False Claims Act

202. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 201 of this Second Amended Complaint.

203. This is a claim for treble damages and civil monetary penalties under California's False Claims Act, Cal. Govt. Code §§ 12650 et seq.

204. Through the acts described above, Defendants and their agents and employees knowingly made, used, and caused to be made or used false records and statements to conceal, avoid, and/or decrease such Defendants' obligations.

205. Defendants illegally restocked drugs returned by California beneficiaries to Merck-Medco's mail order facilities and/or California's beneficiaries are receiving these illegally returned drugs.

206. By reason of the such Defendants' wrongful conduct California and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT IX

Violation of § 175/3 (a) (1) of the Illinois
Whistleblower Reward and Protection Act

207. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 206 of this Second Amended Complaint.

208. This is a claim for treble damages and civil monetary penalties under the Illinois Whistleblower and Protection Act, Ill. Ann. Stat. ch. 740, para. 175/1 et seq.

209. Through the acts described above, Defendants and their agents and employees knowingly have presented and/or caused to be presented for payments and approval to the Illinois Medicaid program, false and fraudulent claims in order to obtain Medicaid reimbursement for mail order pharmacy services that were not eligible for any such reimbursement.

210. Illinois and its Medicaid carriers, intermediaries and agents --unaware of the falsity of the claims that such Defendants and their agents and employees presented and/or caused to be presented --have paid and approved mail order pharmacy claims that would not be paid or approved in any part if the truth were known.

211. Defendants illegally restocked drugs returned by Illinois beneficiaries to Merck-Medco's mail order facilities and/or

Illinois' beneficiaries are receiving these illegally returned drugs.

212. By reason of the such Defendants' wrongful conduct Illinois and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT X

Violation of § 175/3 (a)(2) of the Illinois
Whistleblower Reward and Protection Act

213. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 212 of this Second Amended Complaint.

214. This is a claim for treble damages and civil monetary penalties under the Illinois Whistleblower and Protection Act, Ill. Ann. Stat. ch. 740, para. 175/1 et seq.

215. Through the acts described above and otherwise, Defendants and their agents and employees knowingly have made, used, and/or caused to be made or used false records and statements in order to get such false and fraudulent Medicaid claims paid and approved.

216. Illinois and its Medicaid carriers, intermediaries and agents --unaware of the falsity of the records and statements that such Defendants and their agents and employees have made,

submitted, and/or cause to be made or submitted --have paid and approved mail order pharmacy claims that would not have been paid or approved in any part if the truth were known.

217. Defendants illegally restocked drugs returned by Illinois beneficiaries to Merck-Medco's mail order facilities and/or Illinois' beneficiaries are receiving these illegally returned drugs.

218. By reason of the such Defendants' wrongful conduct Illinois and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XI

Violation of § 175/3 (a)(7) of the Illinois Whistleblower Reward and Protection Act

219. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 218 of this Second Amended Complaint.

220. This is a claim for treble damages and civil monetary penalties under the Illinois Whistleblower and Protection Act, 111. Ann. Stat. ch. 740, para. 175/1 et seq.

221. Through the acts described above, Defendants and their agents and employees knowingly made, used, and caused to be made or used false records and statements to conceal, avoid, and/or

decrease such Defendants' obligation in accordance with the mandatory terms of such agreements, to rebate money to the Illinois' Medicaid program.

222. Defendants illegally restocked drugs returned by Illinois beneficiaries to Merck-Medco's mail order facilities and/or Illinois' beneficiaries are receiving these illegally returned drugs.

223. By reason of the such Defendants' wrongful conduct Illinois and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XII

Violation of § 71-5-182(a)(1)(A) of the Tennessee Medicaid False Claims Act

224. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 223 of this Second Amended Complaint.

225. This is a claim for treble damages and civil monetary penalties under the Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§ 71-5-181 et seq.

226. Through the acts described above, Defendants and their agents and employees knowingly have presented and/or caused to be

presented for payment and approval to the Tennessee Medicaid program, false and fraudulent claims in order to obtain Medicaid reimbursement for mail order pharmacy services that were not eligible for any such reimbursements.

227. Tennessee and its Medicaid carriers, intermediaries and agents --unaware of the falsity of the claims that such Defendants and their agents and employees presented and/or caused to be presented --have paid and approved mail order pharmacy claims that would not be paid or approved in any part if the truth were known.

228. Defendants illegally restocked drugs returned by Tennessee beneficiaries to Merck-Medco's mail order facilities and/or Tennessee's beneficiaries are receiving these illegally returned drugs.

229. By reason of the such Defendants' wrongful conduct Tennessee and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XIII

Violation of § 71-5-182(a)(1)(B) of the
Tennessee Medicaid False Claims Act

230. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 229 of this Second Amended Complaint.

231. This is a claim for treble damages and civil monetary penalties under the Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§ 71-181 et seq.

232. Through the acts described above and otherwise Defendants and their agents and employees knowingly have made, used, an/or caused to be made or used false records and statements in order to get such false and fraudulent Medicaid claims paid and approved.

233. Tennessee and its Medicaid carriers, intermediaries and agents -- unaware of the falsity of the records and statements that such Defendants and their agents and employees have made, submitted and/or caused to be made or submitted -- have paid and approved claims for mail order pharmacy services that would not have been paid or approved in any part if the truth were known.

234. Defendants illegally restocked drugs returned by Tennessee beneficiaries to Merck-Medco's mail order facilities and/or Tennessee's beneficiaries are receiving these illegally returned drugs.

235. By reason of the such Defendants' wrongful conduct Tennessee and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XIV

Violation of § 71-5-182(a)(1)(D) of the
Tennessee Medicaid False Claims Act

236. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 235 of this Second Amended Complaint.

237. This is a claim for treble damages and civil monetary penalties under the Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§ 71-5-181 et seq.

238. Through the acts described above, Defendants and their agents and employees knowingly made, used, and caused to be made or used false records and statements to conceal, avoid, and/or decrease such Defendants' obligation.

239. Defendants illegally restocked drugs returned by Tennessee beneficiaries to Merck-Medco's mail order facilities and/or Tennessee's beneficiaries are receiving these illegally returned drugs.

240. By reason of the such Defendants' wrongful conduct Tennessee and its Medicaid programs have been damaged in an amount

that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XV

Violation of § 36.002(1) of the Texas Medicaid False Claims Act

241. Relators reallege and incorporate by reference the allegations made in Paragraphs through 240 of this Second Amended Complaint.

242. This is a claim for restitution, interest, double damages and civil monetary penalties under the Texas Medicaid False Claims Act. Tex. Hum. Res. Code Ann. §§ 36.002 et seq.

243. Through the acts described above, Defendants their agents and employees knowingly and intentionally have made false statements and misrepresentations of materials fact on application for payments under the Medicaid program in order to obtain Medicaid reimbursement, for mail order pharmacy services that were not eligible for any such reimbursement.

244. Texas and its Medicaid carriers, intermediaries and agents -- unaware of the false statements and material misrepresentations claims that such Defendants and their agents and employees have made and/or caused to be made -- have paid and approved claims for mail order pharmacy services that would not be paid or approved in any part if the truth were known.

245. Defendants illegally restocked drugs returned by Texas beneficiaries to Merck-Medco's mail order facilities and/or Texas' beneficiaries are receiving these illegally returned drugs.

246. By reason of the such Defendants' wrongful conduct Texas and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XVI

Violation of § 36.002(2) of the Texas Medicaid False Claims Act

247. Relators reallege and incorporate by reference the allegations made in Paragraphs through 246 of this Second Amended Complaint.

248. This is a claim for restitution, interest, double damages and civil monetary penalties under the Texas Medicaid False Claims Act, Tex. Hum. Res. Code Ann. §§ 36.002 et seq.

249. Through the acts described above and otherwise, defendants and their agents and employees knowingly and intentionally concealed or failed to disclose that they had submitted fraudulent claims for mail order pharmacy services for Medicaid patients in order to get false and fraudulent Medicaid claims paid.

250. Texas and its Medicaid carriers, intermediaries and agents have paid and approved inflated claims for mail order pharmacy services would not have been paid or approved in any part if the truth were known.

251. Defendants illegally restocked drugs returned by Texas beneficiaries to Merck-Medco's mail order facilities and/or Texas' beneficiaries are receiving these illegally returned drugs.

252. By reason of such Defendants' wrongful conduct Texas and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XVII

Violation of § 36.002(7) of the Texas Medicaid False Claims Act

253. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 252 of this Second Amended Complaint.

254. This is a claim for restitution, interest, double damages and civil monetary penalties under the Texas Medicaid False Claims Act, Tex. Hum. Res. Code Ann. §§ 36.002 et seq.

255. Through the acts described above, Defendants and their agents or employees knowingly and intentionally have made claims

under the Medicaid program for products that are inappropriate for sale to Medicaid patients.

256. Defendants illegally restocked drugs returned by Texas beneficiaries to Merck-Medco's mail order facilities and/or Texas' beneficiaries are receiving these illegally returned drugs.

257. By reason of such Defendants' wrongful sales of mail order pharmacy services that are inappropriate for Medicaid reimbursement, Texas and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XVIII

Violation of D.C. Code Ann. § 1-1188.14(a)(1)

258. Relators allege and incorporate by reference the allegations made in Paragraphs 1 through 257 of this Second Amended Complaint.

259. This is a claim for treble damages and civil monetary penalties under D.C. Code Ann. §§ 1-1188.13 et seq.

260. Through the acts described above and otherwise Defendants and their agents and employees knowingly have presented and/or caused to be presented for payment and approval to the District of Columbia Medicaid program, false and fraudulent claims in order to

obtain Medicaid reimbursement for mail order pharmacy services that were not eligible for any such reimbursement.

261. The District of Columbia and its Medicaid carriers, intermediaries and agents -- unaware of the falsity of the claims that such Defendants and their agents and employees presented and/or caused to be presented -- have paid and approved claims for mail order pharmacy services that would not be paid or approved in any part if the truth were known.

262. Defendants illegally restocked drugs returned by District of Columbia beneficiaries to Merck-Medco's mail order facilities and/or District of Columbia's beneficiaries are receiving these illegally returned drugs.

263. By reason of the such Defendants' wrongful conduct the District of Columbia and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XIX

Violation of D.C. Code Ann. § 1-1188.14(a)(2)

264. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 263 of this Second Amended Complaint.

265. This is a claim for treble damages and civil monetary penalties under D.C. Code Ann. §§ 1-1188.13 et seq.

266. Through the acts described above and otherwise, Defendants and their agents and employees knowingly have made, used, and/or caused to be made or used false records and statements in order to get such false and fraudulent Medicaid claims paid and approved.

267. The District of Columbia and its Medicaid carrier, intermediaries and agents -- unaware of the falsity of the records and statements that such Defendants and their agents and employees have made, submitted, and/or caused to be made or submitted -- have paid and approved claims for mail order pharmacy services that would not have been paid or approved in any part if the truth were known.

268. Defendants illegally restocked drugs returned by District of Columbia beneficiaries to Merck-Medco's mail order facilities and/or District of Columbia's beneficiaries are receiving these illegally returned drugs.

269. By reason of the such Defendants' wrongful conduct the District of Columbia and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XX

Violation of D.C. Code Ann. § 1-1188.14(a)(7)

270. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 269 of this Second Amended Complaint.

271. This is a claim for treble damages and civil monetary penalties under D. C. Code Ann. §§ 1-1188.13 et seq.

272. Through the acts described above, Defendants and their agents and employees knowingly made, used, and caused to be made or used false records and statements to conceal, avoid, and/or decrease such Defendants' obligations.

273. Defendants illegally restocked drugs returned by District of Columbia beneficiaries to Merck-Medco's mail order facilities and/or District of Columbia's beneficiaries are receiving these illegally returned drugs.

274. By reason of the such Defendants' wrongful conduct the District of Columbia and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XXI

Violation of § 46:483.3(A) of the
Louisiana Medical Assistance Programs Integrity Law

275. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 274 of this Second Amended Complaint.

276. This is a claim for treble damages and civil monetary penalties under the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. Ann. §§ 46:439 et seq.

277. Through the acts described above and otherwise Defendants and their agents and employees knowingly have presented and/or caused to be presented for payment and approval to the Louisiana Medicaid program, false and fraudulent claims in order to obtain Medicaid reimbursement for mail order pharmacy services that were not eligible for any such reimbursement.

278. Louisiana and its Medicaid carriers, intermediaries and agents -- unaware of the falsity of the claims that such Defendants and their agents and employees presented and/or caused to be presented -- have paid and approved claims for mail order pharmacy services that would not be paid or approved in any part if the truth were known.

279. Defendants illegally restocked drugs returned by Louisiana beneficiaries to Merck-Medco's mail order facilities

and/or Louisiana's beneficiaries are receiving these illegally returned drugs.

280. By reason of the such Defendants' wrongful conduct Louisiana and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XXII

Violation of § 46:483.3(B) of the
Louisiana Medical Assistance Programs Integrity Law

281. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 280 of this Second Amended Complaint.

282. This is a claim for treble damages and civil monetary penalties under the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. Ann. §§ 46:439 et seq.

283. Through the acts described above and otherwise, Defendants and their agents and employees knowingly engaged in misrepresentation to obtain, and/or attempt to obtain, payment from Louisiana Medicaid programs.

284. Louisiana and its Medicaid carrier, intermediaries and agents -- unaware of the misrepresentation that such Defendants and their agents and employees have engaged in to obtain, and/or attempt to obtain payment -- have paid and approved claims for mail

order pharmacy services that would not have been paid or approved in any part if the truth were known.

285. Defendants illegally restocked drugs returned by Louisiana beneficiaries to Merck-Medco's mail order facilities and/or Louisiana's beneficiaries are receiving these illegally returned drugs.

286. By reason of the such Defendants' wrongful conduct Louisiana and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XXIII

Violation of § 46:483.3(C) of the
Louisiana Medical Assistance Programs Integrity Law

287. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 286 of this Second Amended Complaint.

288. This is a claim for treble damages and civil monetary penalties under the Louisiana Medical Assistance Programs Integrity Law §§ 46:439 et seq.

289. Through the acts described above and otherwise, Defendants and their agents and employees conspired to defraud, and/or attempt to defraud, the Louisiana Medicaid program through

misrepresentation and/or by obtaining, and/or attempting to obtain, payment for a false or fraudulent claim.

290. Louisiana and its Medicaid carrier, intermediaries and agents -- unaware of the conspiracy to defraud, and/or attempt to defraud by such Defendants and their agents and employees -- have paid and approved claims for mail order pharmacy services that would not have been paid or approved in any part if the truth were known.

291. Defendants illegally restocked drugs returned by Louisiana beneficiaries to Merck-Medco's mail order facilities and/or Louisiana's beneficiaries are receiving these illegally returned drugs.

292. By reason of the such Defendants' wrongful conduct Louisiana and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XXIV

Violation of § 400.607 Sec. (1) of the
Michigan Medicaid False Claims Act

293. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 292 of this Second Amended Complaint.

294. This is a claim for treble damages and civil monetary penalties under the Michigan Medicaid False Claims Act, Mich. Stat. Ann. §§ 400.601 et seq.

295. Through the acts described above and otherwise Defendants and their agents and employees knowingly have presented and/or caused to be presented for payment and approval to the Michigan Medicaid program, false and fraudulent claims in order to obtain Medicaid reimbursement for mail order pharmacy services that were not eligible for any such reimbursement.

296. Michigan and its Medicaid carriers, intermediaries and agents -- unaware of the falsity of the claims that such Defendants and their agents and employees presented and/or caused to be presented -- have paid and approved claims for mail order pharmacy services that would not be paid or approved in any part if the truth were known.

297. Defendants illegally restocked drugs returned by Michigan beneficiaries to Merck-Medco's mail order facilities and/or Michigan's beneficiaries are receiving these illegally returned drugs.

298. By reason of the such Defendants' wrongful conduct Michigan and its Medicaid program have been damaged in an amount

that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XXV

Violation of § 400.606 Sec. 6.(1) of the
Michigan Medicaid False Claims Act

299. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 298 of this Second Amended Complaint.

300. This is a claim for treble damages and civil monetary penalties under the Michigan Medicaid False Claims Act, Mich. Stat. Ann. §§ 400.601 et seq.

301. Through the acts described above and otherwise, Defendants and their agents and employees entered into an agreement, combination, and/or conspiracy to defraud Michigan by obtaining and/or aiding another to obtain a payment for a false or fraudulent claim from the Michigan Medicaid program.

302. Michigan and its Medicaid carrier, intermediaries and agents -- unaware of the agreement, combination, or conspiracy by such Defendants and their agents and employees to defraud the state by obtaining and/or aiding another to obtain Medicaid payment -- have paid and approved claims for mail order pharmacy services that would not have been paid or approved in any part if the truth were known.

303. Defendants illegally restocked drugs returned by Michigan beneficiaries to Merck-Medco's mail order facilities and/or Michigan's beneficiaries are receiving these illegally returned drugs.

304. By reason of the such Defendants' wrongful conduct Michigan and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XXVI

Violations of § 357.040(1)(a) of Nevada's False Claims Act

305. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 304 of this Second Amended Complaint.

306. This is a claim for treble damages and civil monetary penalties under Nevada's False Claims Act, Nev. Rev. Stat. § 357.010 et seq.

307. Through the acts described above, Defendants and their agents and employees knowingly have presented and/or caused to be presented for payment and approval to the Nevada Medicaid program, false and fraudulent claims in order to obtain Medicaid reimbursement for mail order pharmacy services that were not eligible for any such reimbursement.

308. Nevada and its Medicaid carriers, intermediaries and agents -- unaware of the falsity of the claims that such Defendants and their agents and employees presented and/or caused to be presented -- have paid and approved claims for mail order pharmacy services that would not be paid or approved in any part if the truth were known.

309. Defendants illegally restocked drugs returned by Nevada beneficiaries to Merck-Medco's mail order facilities and/or Nevada's beneficiaries are receiving these illegally returned drugs.

310. By reason of such Defendants' wrongful conduct Nevada and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XVII

Violations of § 357.040(1)(b) of Nevada's False Claims Act

311. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 310 of this Second Amended Complaint.

312. This is a claim for treble damages and civil monetary penalties under Nevada's False Claims Act, Nev. Rev. Stat. § 357.010 et seq.

313. Through the acts described above and otherwise, Defendants and their agents and employees knowingly have made, used, and/or caused to be made or used false records and statements in order to get such false and fraudulent Medicaid claims paid and approved.

314. Nevada and its Medicaid carrier, intermediaries and agents -- unaware of the falsity of the records and statements that such Defendants and their agents and employees have made, submitted, and/or caused to be made or submitted -- have paid and approved claims for mail order pharmacy services that would not have been paid or approved in any part if the truth were known.

315. Defendants illegally restocked drugs returned by Nevada beneficiaries to Merck-Medco's mail order facilities and/or Nevada's beneficiaries are receiving these illegally returned drugs.

316. By reason of such Defendants' wrongful conduct, Nevada and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XXVIII

Violation of § 357.040(1)(g) of Nevada's False Claims Act

317. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 316 of this Second Amended Complaint.

318. This is a claim for treble damages and civil monetary penalties under Nevada's False Claims Act, Nev. Rev. Stat. § 357.010 et seq.

319. Through the acts described, Defendants and their agents and employees knowingly made, used, and caused to be made or used false records and statements to conceal, avoid, and/or decrease such Defendants' obligations.

320. Defendants illegally restocked drugs returned by Nevada beneficiaries to Merck-Medco's mail order facilities and/or Nevada's beneficiaries are receiving these illegally returned drugs.

321. By reason of such Defendants' wrongful conduct, Nevada and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XXIX

Violation of § 5B(1) of Massachusetts' False Claims Act

322. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 321 of this Second Amended Complaint.

323. This is a claim for treble damages and civil monetary penalties under Massachusetts's False Claims Act, Mass. Ann. Laws. Chapter 12, §5 et seq.

324. Through the acts described above, Defendants and their agents and employees knowingly have presented and/or caused to be presented for payment and approval to the Massachusetts Medicaid program, false and fraudulent claims in order to obtain Medicaid reimbursement for mail order pharmacy services that were not eligible for any such reimbursement.

325. Massachusetts and its Medicaid carriers, intermediaries and agents -- unaware of the falsity of the claims that such Defendants and their agents and employees presented and/or caused to be presented -- have paid and approved claims for mail order pharmacy services that would not be paid or approved in any part if the truth were known.

326. Defendants illegally restocked drugs returned by Massachusetts beneficiaries to Merck-Medco's mail order facilities

and/or Massachusetts' beneficiaries are receiving these illegally returned drugs.

327. By reason of such Defendants' wrongful conduct Massachusetts and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XXX

Violations of § 5B(2) of Massachusetts' False Claims Act

328. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 327 of this Second Amended Complaint.

329. This is a claim for treble damages and civil monetary penalties under Massachusetts False Claims Act, Mass. Ann. Laws. Chapter 12, §5 et seq.

330. Through the acts described above and otherwise, Defendants and their agents and employees knowingly have made, used, and/or caused to be made or used false records and statements in order to get such false and fraudulent Medicaid claims paid and approved.

331. Massachusetts and its Medicaid carrier, intermediaries and agents -- unaware of the falsity of the records and statements that such Defendants and their agents and employees have made,

submitted, and/or caused to be made or submitted -- have paid and approved claims for mail order pharmacy services that would not have been paid or approved in any part if the truth were known.

332. By reason of such Defendants' wrongful conduct, Massachusetts and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XXXI

Violation of § 5B(8) of Massachusetts' False Claims Act

333. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 332 of this Second Amended Complaint.

334. This is a claim for treble damages and civil monetary penalties under Massachusetts False Claims Act, Mass. Ann. Laws. Chapter 12, §5 et seq.

335. Through the acts described, Defendants and their agents and employees knowingly made, used, and caused to be made or used false records and statements to conceal, avoid, and/or decrease such Defendants' obligations.

336. Defendants illegally restocked drugs returned by Massachusetts beneficiaries to Merck-Medco's mail order facilities

and/or Massachusetts' beneficiaries are receiving these illegally returned drugs.

337. By reason of such Defendants' wrongful conduct, Massachusetts and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XXXII

Violations of § 216.3(A)(1) of
Virginia's Fraud Against Taxpayers Act

338. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 337 of this Second Amended Complaint.

339. This is a claim for treble damages and civil monetary penalties under Virginia's Fraud Against Taxpayers Act, Va. Code Ann. § 8.01-216.1 et seq.

340. Through the acts described above, Defendants and their agents and employees knowingly have presented and/or caused to be presented for payment and approval to the Virginia Medicaid program, false and fraudulent claims in order to obtain Medicaid reimbursement for mail order pharmacy services that were not eligible for any such reimbursement.

341. Virginia and its Medicaid carriers, intermediaries and agents --unaware of the falsity of the claims that such Defendants

and their agents and employees presented and/or caused to be presented -- have paid and approved claims for mail order pharmacy services that would not be paid or approved in any part if the truth were known.

342. Defendants illegally restocked drugs returned by Virginia beneficiaries to Merck-Medco's mail order facilities and/or Virginia's beneficiaries are receiving these illegally returned drugs.

343. By reason of such Defendants' wrongful conduct Virginia and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XXXIII

Violations of § 216.3(A)(2) of
Virginia's Fraud Against Taxpayers Act

344. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 343 of this Second Amended Complaint.

345. This is a claim for treble damages and civil monetary penalties under Virginia's Fraud Against Taxpayers Act, Va. Code Ann. § 8.01-216.1 et seq.

346. Through the acts described above and otherwise, Defendants and their agents and employees knowingly have made,

used, and/or caused to be made or used false records and statements in order to get such false and fraudulent Medicaid claims paid and approved.

347. Virginia and its Medicaid carrier, intermediaries and agents -- unaware of the falsity of the records and statements that such Defendants and their agents and employees have made, submitted, and/or caused to be made or submitted -- have paid and approved claims for mail order pharmacy services that would not have been paid or approved in any part if the truth were known.

348. Defendants illegally restocked drugs returned by Virginia beneficiaries to Merck-Medco's mail order facilities and/or Virginia's beneficiaries are receiving these illegally returned drugs.

349. By reason of such Defendants' wrongful conduct, Virginia and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XXXIV

Violation of § 216.3(A)(7) of
Virginia's Fraud Against Taxpayers Act

350. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 349 of this Second Amended Complaint.

351. This is a claim for treble damages and civil monetary penalties under Virginia's Fraud Against Taxpayers Act, Va. Code Ann. § 8.01-216.1 et seq.

352. Through the acts described, Defendants and their agents and employees knowingly made, used, and caused to be made or used false records and statements to conceal, avoid, and/or decrease such Defendants' obligations.

353. Defendants illegally restocked drugs returned by Virginia beneficiaries to Merck-Medco's mail order facilities and/or Virginia's beneficiaries are receiving these illegally returned drugs.

354. By reason of such Defendants' wrongful conduct, Virginia and its Medicaid program have been damaged in an amount that has yet to be determined but that is expected to be in the millions of dollars.

COUNT XXXV

Violation of Mich. Comp.Laws Ann. § 333.17766; Tex.
Health & Safety Code Ann. § 431.021; D.C. Code Ann. § 2-2013;
Fla. Stat. Ann. § 465.016; Nev. Rev. Stat. § 639.267;
and the 21 C.F.R. § 211.204

355. Relators reallege and incorporate by reference the allegations made in Paragraphs 1 through 354 of this Second Amended Complaint.

356. By virtue of Merck-Medco's restocking of returned drugs, Merck-Medco has knowingly allowed returned drugs and potentially tainted and adulterated drugs into the stream of commerce from one of its facilities located in the states of Michigan, Texas, Florida, Nevada and the District of Columbia, or to patients located in one of these jurisdictions, or on behalf of its customers located in one of these jurisdictions.

357. Defendants illegally restocked drugs returned by beneficiaries located in the states of Michigan, Texas, Florida, Nevada and the District of Columbia to Merck-Medco's mail order facilities and/or beneficiaries located in the states of Michigan, Texas, Florida, Nevada and the District of Columbia are receiving these illegally returned drugs.

358. As a result of Merck-Medco's policies, state and federal health plans and their patients have been damaged in an amount that has yet to be determined but that is in the millions of dollars.

PRAYER FOR RELIEF

WHEREFORE, Relators pray for judgment against Defendants as follows:

1. That Defendants cease and desist from violating 31 U.S.C. § 3729 et seq.; Fla. Stat. Ann §§ 68.081 et seq.; Cal. Govt. Code §§ 12650 et seq.; Ill. Ann. Stat. ch. 740, para. 175/1 et seq.; Tenn. Code Ann. §§ 71-5-181 et seq.; Tex. Hum. Res. Code Ann. §§ 36.001 et seq.; D.C. Code Ann. §§ 1-1188.13 et seq.; La. Rev. Stat. Ann. §§ 46:439 et seq.; Mich Stat. Ann. §§ 400.601 et seq.; Nev. Rev. Stat. § 357.010 et seq., Mass. Ann. Laws Ch. 12, §5(A)-(O); Va. Code Ann. § 8.01-216.1 et seq.;

2. That the Court enter judgment against all liable Defendants in an amount equal to three times the amount of damages the United States has sustained as a result of Defendants' actions, as well as a civil penalty against each defendant for each violation of 31 U.S.C. § 3729 et seq.;

3. That the Court enter judgment against all liable Defendants in an amount equal to three times the amount of damages Florida has sustained as a result of Defendants' actions, as well as a civil penalty against each defendant of \$10,000 for each violation of Fla. Stat. Ann. §§ 68.081 et seq.;

4. That the Court enter judgment against all liable Defendants in an amount equal to three times the amount or damages California has sustained as a result of Defendants' actions, as well as a civil penalty against each Defendant of \$10,000 for each violation of Cal. Govt. Code §§ 12650 et seq.;

5. That the Court enter judgment against all liable Defendants in an amount equal to three times the amount of damages Illinois has sustained as a result of Defendants' actions, as well as a civil penalty against each defendant of \$10,000 for each violation of 111. Ann. Stat. ch. 740, para. 175/1 et seq.;

6. That the Court enter judgment against all liable Defendants in an amount equal to three times the amount of damages Tennessee has sustained as a result of Defendants' actions, as well as a civil penalty against each defendant of \$10,000 for each violation of Tenn. Code Ann. §§ 71-5-181 et seq.;

7. That the Court enter judgment against all liable Defendants in an amount equal to restitution and interest, plus two times the amount of damages Texas has sustained as a result of Defendants' actions, as well as a civil penalty against each defendant of \$10,000 for each violation of Tex. Hum. Res. Code Ann. §§ 36.002 et seq.;

8. That the Court enter judgment against all liable Defendants in an amount equal to restitution and interest, plus two times the amount of damages the District of Columbia has sustained as a result of Defendants' actions, as well as a civil penalty each defendant of \$10,000 for each violation of D.C. Code Ann. §§ 1-1188.13 et seq.;

9. That the Court enter judgment against all liable Defendants in an amount equal to restitution and interest, plus two times the amount of damages Louisiana has sustained as a result of Defendants' actions, as well as a civil penalty against each defendant of \$10,000 for each violation of La. Rev. Stat. Ann. §§ 46:439 et seq.;

10. That the Court enter judgment against all liable Defendants in an amount equal to restitution and interest, plus two times the amount of damages Michigan has sustained as a result of Defendants' actions, as well as a civil penalty against each defendant of \$10,000 for each violation of Mich. Stat. Ann. §§ 400.601 et seq.;

11. That the Court enter judgment against all liable Defendants in an amount equal to restitution and interest, plus two times the amount of damages Nevada has sustained as a result of Defendants' actions, as well as a civil penalty against each

defendant of \$10,000 for each violation of Nev. Rev. Stat. § 357.010 et seq.;

12. That the Court enter judgment against all liable Defendants in an amount equal to restitution and interest, plus two times the amount of damages Massachusetts has sustained as a result of Defendants' actions, as well as a civil penalty against each defendant of \$10,000 for each violation of Mass. Ann. Laws Ch. 12, § 5 et seq.;

13. That the Court enter judgment against all liable Defendants in an amount equal to restitution and interest, plus two times the amount of damages Virginia has sustained as a result of Defendants' actions, as well as a civil penalty against each defendant of \$10,000 for each violation of Va. Code Ann. § 8.01-216.1 et seq.;

14. That Relators be awarded the maximum amount allowed pursuant to the qui tam provisions of the Federal, Florida, California, Illinois, Tennessee, Texas, the District of Columbia, Louisiana, Michigan, Nevada, Massachusetts, and Virginia statutes;

15. The Relators be awarded all costs and expenses of this action, including attorneys' fees; and

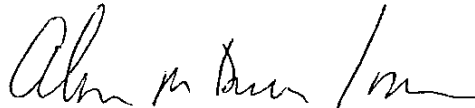
16. That the United States, Florida, California, Illinois, Tennessee, Texas, the District of Columbia, Louisiana, Michigan,

Nevada, Massachusetts, and Virginia and Relators receive all such other relief as the Court deems just and proper.

JURY DEMAND

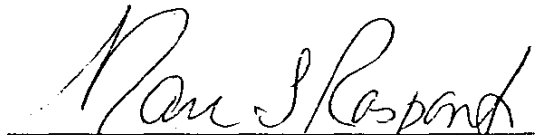
Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Relators hereby demand trial by jury.

Respectfully submitted,



Alison M. Duncan (D.C. Bar #390718)
PORTER, WRIGHT, MORRIS & ARTHUR
1919 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20006-3434
(202) 778-3000
(202) 778-3063

and



Marc S. Raspanti, Esq. (ID #41350)
Michael A. Morse (ID #80507)
MILLER ALFANO & RASPANTI, P.C.
1818 Market Street
Suite 3402
Philadelphia, PA 19103
(215) 972-6400
(215) 981-0082 - fax

Dated: Mar 18, 2003

Counsel for Relators